

ATTACHMENT 71

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

6 IN RE: DA VINCI SURGICAL)
7 ROBOT ANTITRUST LITIGATION) Lead Case No. 3:21-cv-03825-VC
8 _____)
9 _____)
10 THIS DOCUMENT RELATES TO:)
11 ALL CASES)
12 _____)
13 SURGICAL INSTRUMENT SERVICE)
14 COMPANY, INC.,)
15 _____)
16 Plaintiff,) Case No. 3:21-cv-03496-VC
17 _____)
18 vs.)
19 _____)
20 INTUITIVE SURGICAL, INC.,)
21 _____)
22 Defendant.)
23 _____)
24 _____)

REMOTE VIDEOTAPED DEPOSITION OF
KAREN F. WANINGER
Thursday, October 6, 2022
Volume I

22 Reported by:
 NADIA NEWHART
23 CSR No. 8714
24 Job No. 5504267
25 PAGES 1 - 90

1 they just call themselves AAMI, AAMI. They -- they
2 are, basically, the professional organization, the
3 national organization for my profession. They are
4 also -- well, you can look them up to find out what
5 else they are. But that's who AAMI is. 01:37:49

6 Q Why did you attend the AAMI annual conference
7 in 2019?

8 A That is the national conference for my
9 profession, and so I attend to -- to learn and to
10 share information with peers. And there is -- as I 01:38:07
11 indicated earlier, there is an exhibit hall where
12 medical equipment vendors will often bring new
13 technology or new items that they think will be of
14 interest to those of us who service and manage the
15 service on their equipment. 01:38:28

16 Q What does Rebotix do?

17 A My understanding, from the limited
18 conversation I had, is that they are a servicer for
19 da Vinci instruments, and they had some -- some
20 information that they were offering to share about 01:38:55
21 opportunities to extend the life of those
22 instruments or of some of those instruments.

23 Q What was the outcome of your interactions
24 with Rebotix?

25 MR. BATEMAN: Objection; vague. 01:39:16

1 You can answer.

2 THE WITNESS: They sent me some follow-up
3 information after the conference.

4 BY MR. CHAPUT:

5 Q What did you do with the follow-up 01:39:29
6 information that Rebotix sent you?

7 A I reviewed it just very generally in terms of
8 giving it a quick read through and I set it aside.
9 Basically, I had forgotten about it until at some
10 point later there was a request to look for cost 01:39:43
11 avoidance opportunities, and then I remembered that
12 I had received that information.

13 So I -- I think I sent an email to a couple
14 people within our Franciscan team who would be aware
15 of the da Vinci robots to find out if there was any 01:40:05
16 interest in evaluating that organization further
17 in -- in the context of looking for cost savings.

18 Q Was there any interest in evaluating Rebotix
19 further?

20 MR. BATEMAN: Objection; calls for 01:40:25
21 speculation.

22 You can answer.

23 THE WITNESS: At the time there -- there may
24 have been interest. But it was pointed out that
25 there was language in our contracts with Intuitive 01:40:35

1 available --

2 MR. BATEMAN: Yeah, yes.

3 MR. CHAPUT: -- for you to see there.

4 MR. BATEMAN: All right. So if you'd just
5 hit refresh. Yeah, there you go, Karen. And then 01:46:24
6 it's Exhibit 101. Yep.

7 THE WITNESS: 101-17?

8 MR. BATEMAN: Yeah.

9 THE WITNESS: Okay. Page 1 of 21 is an
10 email. Okay. 01:46:39

11 BY MR. CHAPUT:

12 Q And, Ms. Waninger, does the document on the
13 Exhibit Share platform appear to be the -- the same
14 one that you're looking at in hard copy?

15 A From a quick read-through, yes, it appears to 01:47:15
16 be the same.

17 Q Okay. Did you review the information that
18 Rebotix sent you and the attachments to Exhibit 101?

19 A I gave it a quick read through, yes.

20 Q Is there a particular reason that you didn't 01:47:34
21 explore it further after reviewing these materials?

22 A I thought I --

23 MR. BATEMAN: Objection; that
24 mischaracterizes testimony.

25 THE WITNESS: So I thought I already answered 01:47:44

1 that question earlier when I said I was informed
2 that we had language in our contract with Intuitive
3 that prevented us from pursuing anything like this
4 without being in breach of contract.

5 BY MR. CHAPUT: 01:48:01

6 Q Sure. And so I -- I apologize. I can make
7 my question a little bit more precise.

8 I believe that you -- you testified that you
9 reviewed it briefly but then set it aside until it
10 came back later.

11 And so my question is, why did you set it
12 aside and not pursue it further when you initially
13 received the information from Rebotix that is
14 reflected in Exhibit 101?

15 A Other things came up. I don't know. It -- 01:48:23
16 it wasn't on the top of my list of things that I
17 needed to immediately accomplish.

18 Q Did you ever ask Rebotix for additional
19 documentation or information regarding the service
20 that Rebotix performed? 01:48:47

21 A I don't specifically recall asking them, no.

22 Q Did you inquire about the specifics of the --
23 what Rebotix described as the repair that they
24 perform on EndoWrist instruments?

25 MR. BATEMAN: Objection; vague and lack of 01:49:06

1 foundation.

2 THE WITNESS: I don't recall asking them for
3 specifics.

4 BY MR. CHAPUT:

5 Q Are you aware that Rebotix took apart 01:49:22
6 EndoWrist and added a new chip to the EndoWrist
7 instruments?

8 MR. BATEMAN: Objection; vague, calls for
9 speculation, lack of foundation.

10 THE WITNESS: I don't know what Rebotix does 01:49:34
11 to the instruments.

12 BY MR. CHAPUT:

13 Q Would it have been important to you to find
14 out what Rebotix does to the instruments prior to
15 entering into an agreement with them? 01:49:46

16 A That's a theoretical question, so had we
17 chosen to investigate further, yes, there would have
18 been a lot more questions that I would have sought
19 answers to.

20 Q What questions would you have sought answers 01:50:08
21 to had you decided to investigate further?

22 A I don't know. I can't answer that. That was
23 then. This is now. I can't -- I don't know.

24 Q Well, so you just mentioned that there -- you
25 would have had a lot more questions, and so my 01:50:25

1 question is whether there are any specific questions
2 that you can think of now that you would have wanted
3 answers to had you decided to investigate the
4 Rebotix opportunity further.

5 MR. BATEMAN: Objection. It's vague and 01:50:36
6 hypothetical.

7 Go ahead.

8 THE WITNESS: I would -- in my process of
9 evaluating a service organization, there are some
10 basic things that I would ask. One is what is their 01:50:50
11 knowledge of the equipment? What are their
12 processes for providing repairs on the equipment?

13 What are their success rates with the repairs
14 that they have done? Maybe ask for references of
15 other customers who are using them as a service. 01:51:22

16 Those are some of the steps that I would
17 normally take when evaluating a service
18 organization.

19 BY MR. CHAPUT:

20 Q Since you didn't ask those questions of 01:51:37
21 Rebotix, is it accurate that you can't say whether
22 you would have recommended to Franciscan that they
23 enter into a service agreement with Rebotix?

24 MR. BATEMAN: Objection. It's vague,
25 hypothetical. 01:51:53

1 THE WITNESS: I can't say what recommendation
2 I would have made. Had the language not been in the
3 contract, I am sure I would have recommended we
4 investigate further.

5 BY MR. CHAPUT:

01:52:11

6 Q Have you ever spoken to Rebotix about this
7 lawsuit?

8 A No.

9 Q Have you ever spoken to Rebotix about their
10 lawsuit against Intuitive? 01:52:22

11 A No.

12 Q Did you ever discuss Rebotix with anyone from
13 Intuitive?

14 A No.

15 Q Did you have any further contact with Rebotix 01:52:30
16 about the EndoWrist service that they offered?

17 MR. BATEMAN: Objection; vague.

18 THE WITNESS: There may have been a follow-up
19 email exchange. I don't recall specifically.

20 BY MR. CHAPUT:

01:53:04

21 Q You mentioned earlier that you negotiated an
22 agreement to, I think, standardize the -- the terms
23 of Franciscan's service agreements with Intuitive;
24 is that correct?

25 MR. BATEMAN: Objection; mischaracterizes

01:53:17

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [X] was [] was not requested.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: October 20, 2022

22
23 Nadia Newhart

24 NADIA NEWHART

25 CSR NO. 8714